

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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Brandon Leandre Brown,

C/A No.: 9:09-2254-JFA-BM JUL -9 A 11: 24

Petitioner,

vs.

ORDER

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

Leroy Cartledge, Warden,

Respondent.

The *pro se* petitioner, Brandon Leandre Brown, brings this action pursuant to 28 U.S.C. § 2254 challenging his state court conviction in 2002 for criminal sexual conduct. He contends that his state trial counsel was ineffective for failing to object to one of the solicitor's comments during closing arguments.

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation and opines that the respondent's motion for summary judgment² should be granted and that the petitioner fails to satisfy his burden to show prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Petitioner responded to the motion.

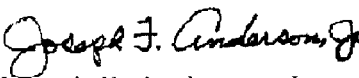
The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on June 10, 2010. The petitioner has not filed any objections to the Report and the time limits to do so have expired.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and the respondent's motion for summary judgment is granted.

On December 1, 2009, the Rules governing Section 2254 and 2255 cases in the United States District Courts were amended to require that the district court issue or deny a certificate of appealability when a final ruling on a habeas petition is issued. *See* Rule 11(a) of the Rules governing 28 U.S.C. § 2254 and 2255. The court has reviewed its order and pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 cases, declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

IT IS SO ORDERED.

July 8, 2010
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge